



## **Headquarters Policy Flash**

**FLASH 2000-19**

**DATE:** June 23, 2000  
**TO:** Procurement Directors  
**FROM:** Office of Procurement and Assistance Policy, MA-51  
Office of Procurement and Assistance Management

**SUBJECT:** A. Federal Acquisition Circular (FAC) 97-18  
B. GSA's Small Business Online Shopping  
C. OFPP Best Practices for Past Performance  
D. GAO Decision on Contract Documentation

**SUMMARY:** This Policy Flash summarizes the recently issued FAC 97-18; provides notice of a newly available GSA on-line purchasing program called SmallBizMall; provides the website address for downloading OFPP's newly issued best practices guide on past performance information; and, summarizes a recent GAO protest decision regarding contract documentation.

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### **A. Federal Acquisition Circular (FAC) 97-18**

The following nine items are in FAC 97-18, which was published in the Federal Register on June 6, 2000, at 65 FR 36011. The FAC is available via the Internet at <http://www.arnet.gov/far> . Contracting personnel should review the details of each item in the full text of the FAC.

*Please note: The effective date and applicability date for each item are noted below in the summary.*

#### **1. Rescission of Office of Federal Procurement Policy Letters**

*Effective Date: June 6, 2000*

This final rule reflects editorial amendments removing unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP) (65 FR 16968, March 30, 2000).

#### **2. FAR Drafting Principles**

*Effective Date: August 7, 2000*

*Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.*

This final rule adds Federal Acquisition Regulation drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users. This rule affects all contracting officers who use the FAR. The final rule adds drafting conventions in FAR 1.108 and amends 1.105-2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions. The drafting conventions in FAR 1.108 address several issues, including: words and terms used in the FAR; delegation of authority; dollar thresholds; application of FAR changes to solicitations and contracts; citations; and imperative sentences that identify contracting officer responsibilities. In particular, paragraph (b) of the new FAR section 1.108 states that each authority is delegable unless specifically stated otherwise (see 1.102-4(b)). Also, paragraph (d) provides that unless otherwise specified: (1) FAR changes apply to solicitations issued on or after the effective date of the change; (2) COs may, at their discretion, include FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and (3) COs may, at their discretion, include the changes in any existing contract with appropriate consideration.

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### **3. Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services**

*Effective Date: August 7, 2000*

*Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.*

This final rule implements Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998. This rule is significant for all contracting officers who buy supplies, including supplies that are furnished under a service contract. The rule rewrites text currently in the FAR based on earlier Executive orders, but reorganizes and relocates some of the text to conform to plain language guidelines for Government writing. The rewrite and reorganization should make the text easier to use and understand. The revisions also emphasize Executive branch policies for the acquisition of products containing recovered material and other environmentally preferable products and services. The rule—

- ▶ Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.
- ▶ Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror's product meets requirements for recycled content or related standards.
- ▶ Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed \$100,000.
- ▶ Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

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### **4. General Records Schedules**

*Effective Date: August 7, 2000*

*Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.*

This final rule implements National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998. This rule affects all contracting officers. The rule--

- ▶ Rewrites and reorganizes the text already in the FAR to make it easier to understand.
- ▶ Simplifies the retention table by grouping several categories of records that were previously treated as separate records under more generic record categories (e.g., the contract file or the contract administration records).
- ▶ Deletes separate retention policy on signed original justifications and approvals, determinations and findings, and rejected engineering change proposals. Those records are retained with the contract files shown in blocks 2 through 7 of the new retention table.
- ▶ Deletes the separate retention period for contract status, expediting, and production surveillance records. Those records are retained with the contract administration records shown in block 7 of the new retention table.

### **5. Federal Supply Schedules Small Business Opportunities**

*Effective Date: August 7, 2000*

*Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.*

This final rule amends the Federal Acquisition Regulation to ensure that small businesses holding contracts under the Federal Supply Schedules are afforded the maximum practicable opportunity to compete for and receive FSS purchases. The rule--

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- ▶ Encourages ordering offices to consider the availability of small business concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order.

**NOTE:** See Acquisition Letter 2000-02, dated 04/20/00, titled *Small Business Programs*, which places further requirements on DOE Contracting Officers to maximize the award of purchases to small businesses holding contracts with the Federal Supply Schedule (FSS). The AL specifically states that Contracting Officers are to target FSS order competitions to small business firms. Contracting Officers are to coordinate with requestors to identify three or more small businesses that hold relevant FSS contracts. FSS order competitions should be further limited, when appropriate, to specific socio-economic categories of small businesses, such as woman-owned or small disadvantaged businesses.

- ▶ Amends FAR Subpart 38.1 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before issuance of a solicitation.
- ▶ Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

### **6. Trade Agreements Thresholds**

*Effective Date: June 6, 2000*

*Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.*

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11, and the clauses at 52.225-11 and 52.225-12 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the Federal Register at 65 FR 17332, March 31, 2000. Contracting Officers must review the new thresholds when acquiring supplies, services, or construction, in order to select the appropriate contract clauses to implement the Buy American Act, Balance of Payments Program, trade agreements, and sanctions of European Union country end products and services.

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### **7. Restrictions on Acquisitions from Yugoslavia and Afghanistan**

*Effective Date: July 6, 2000*

*Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after July 6, 2000.*

This final rule amends FAR Subpart 25.7, section 25.1103, and the associated clauses at 52.212-5, 52.213-4, and 52.225-13, to implement Executive Orders 13121 and 13129. These Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States. This rule primarily affects contracting officers making purchases overseas, for overseas use, because the Treasury Department already prohibits import of these restricted goods and services into the United States. The rule is particularly beneficial to contracting officers facing unusual circumstances overseas (such as location within a restricted territory), explicitly providing an exception for such circumstances.

### **8. Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage**

*Effective Date: June 6, 2000*

*Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.*

This interim rule amends FAR Part 30, Cost Accounting Standards Administration, and the provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with Cost Accounting Standards. The rule—

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- ▶ Amends the provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million ("trigger contract") to be subject to full CAS coverage, since the CAS Board removed this "trigger contract" amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201-3. The CAS Board established a new "trigger contract" dollar amount of \$7.5 million in the CAS applicability section of its regulations (48 CFR 9903.201-1) rather than in its solicitation provision. Since FAR 30.201-1 already references this section, no FAR changes were required to address the new "trigger contract" dollar amount.
- ▶ Increases the dollar threshold for full CAS coverage from \$25 million to \$50 million.
- ▶ Adds procedures and conditions for agency waiver of the applicability of CAS.

### **9. Technical Amendments**

*Effective Date: June 6, 2000*

These amendments update references and make editorial changes at sections 3.303, 5.204, 47.504, 49.601-1, and 49.601-2.

### **B. GSA's Small Business Online Shopping**

Launched on April 3, 2000, the GSA's new SmallBizMall gives Federal agencies the opportunity to use the web to order information technology products and services from 8(a) and small businesses. Nine industry partners are part of this pilot program, which is expected to be fully implemented within the next few months. The advantages of using a small business e-commerce site include: short procurement lead time; easy to use; qualified 8(a) industry partners are available; receive the 8(a) credit; support small business and meet procurement preference goals; support the Presidential policy for E-Commerce use. The website is [www.smallbizmall.gov](http://www.smallbizmall.gov).

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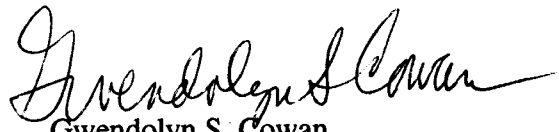
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### **C. OFPP Best Practices for Past Performance**

The Office of Federal Procurement Policy has issued its *Best Practices for Collecting and Using Current and Past Performance Information*. Federal agencies are encouraged to use the document as part of good contract administration practice and as a useful tool in the source selection process. The document is available on the Internet at: <http://www.arnet.gov/Library/OFPP/BestPractices/>

### **D. GAO Decision on Contract Documentation**

GAO recently sustained a protest of a source selection decision where the record did not establish the reasonableness of the evaluation or the cost/technical tradeoff underlying the source selection. In this case an agency kept the slides presented at the oral presentations, but the slides did not provide a sufficient record to test the reasonableness of the agency's evaluation. GAO also found that the best value determination was inadequately documented because it only addressed the awardee's advantages and did not reflect a comparison with the protester. The case is J&J Maintenance, and it can be accessed on the Internet at: <http://www.gao.gov/decisions/bidpro/2847082.htm>.

  
Gwendolyn S. Cowan  
Director

cc:  
PPAG Members